

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DYLAN CORRAL,

Defendants.

Case No. 2:22-CR-00048-JCC-TLF

**ORDER DECLINING TO
CONDUCT REMOTE HEARING;
AND ORDER DEFERRING
RULING ON DEFENDANT'S
MOTION RE: REQUEST TO
DISCHARGE THE FEDERAL
PUBLIC DEFENDER (DKT. 69)**

This matter comes before the Court on Defendant's motion for a status conference regarding an appointment of new counsel and a request for an *ex parte* hearing. See Dkt. 69. For the reasons discussed below, the Court defers ruling on Defendant's motion until Monday, June 5, 2023, at the earliest—the date on which an in-person hearing concerning Defendant's competency is set.

Defendant moves to discharge his attorney, and the entire Office of the Federal Public Defender, on the ground that he has “lost confidence in and does not trust his attorneys.” Dkt. 69 at 1. Thus, he requests an *in camera* hearing to discuss his concerns with the Court. He has no objection to have the Magistrate Judge preside over the ex parte hearing, he offers to waive his right to be physically present, and he agrees to appear remotely by videoconference. *Id.*

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DEFENDANT'S MOTION RE: REQUEST TO
DISCHARGE THE FEDERAL PUBLIC DEFENDER
(DKT. 69) - 1

1 Defendant has a fundamental right to be present, which is derived from the
2 Confrontation Clause of the Sixth Amendment and the Due Process Clauses of the Fifth
3 and Fourteenth Amendments. See *United States v. Gagnon*, 470 U.S. 522, 526 (1985).
4 A defendant's right under the Constitution may be waived, provided such waiver is
5 voluntary, knowing and intelligent. See *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).
6 Further, "a defendant must have that degree of competence required to make decisions
7 of very serious import." *Chavez v. United States*, 656 F.2d 512, 518 (9th Cir. 1981).

8 In this case, the Court will conduct an in-person hearing concerning Mr. Corral's
9 competency, on June 5, 2023. It has long been considered a violation of the
10 constitutional right to due process to convict a person who is not mentally competent to
11 stand trial. *Drope v. Missouri*, 420 U.S. 162, 172–173 (1975); see generally *United*
12 *States v. Moore*, 599 F.2d 310 (9th Cir. 1979), cert. denied, 444 U.S. 1024 (1980) (A
13 defendant is not competent to waive constitutional rights if mental illness has
14 substantially impaired their ability to make a reasoned choice among the alternatives
15 presented and to understand the nature and consequences of the waiver).

16 The defendant has a non-waivable right to counsel during competency
17 proceedings. *U.S. v. Kowalczyk*, 805 F.3d 847 (9th Cir. 2015). And the defendant has a
18 right to testify during a competency hearing; that right is personal and may only be
19 relinquished by the defendant. *U.S. v. Gillenwater*, 717 F.3d 1070, 1076 (9th Cir. 2013).

20 Therefore, the Court declines to conduct an *ex parte* hearing by video
21 teleconference on Zoom, and declines Mr. Corral's waiver of his right to be present. The
22 Court will conduct the competency hearing in-person on June 5 and if Mr. Corral (and
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25 ORDER DECLINING TO CONDUCT REMOTE
HEARING; AND ORDER DEFERRING RULING ON
DEFENDANT'S MOTION RE: REQUEST TO
DISCHARGE THE FEDERAL PUBLIC DEFENDER
(DKT. 69) - 2

1 his attorney) wishes to address the Court at that time, *in camera*, the Court will hear Mr.
2 Corral's concerns about defense counsel during the hearing.

3 The parties should still arrive to Courtroom 1 at 9:00 AM; the Court will first
4 discuss the instant motion with the parties before proceeding with the competency
5 hearing.

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7 Dated this 23rd day of May, 2023.

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10 Theresa L. Fricke
11 United States Magistrate Judge

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25 ORDER DECLINING TO CONDUCT REMOTE
HEARING; AND ORDER DEFERRING RULING ON
DEFENDANT'S MOTION RE: REQUEST TO
DISCHARGE THE FEDERAL PUBLIC DEFENDER
(DKT. 69) - 3